COMSAT CORPORATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 21, 1997

By Hand

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: In the Matter of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *et al.*, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007

Dear Mr. Caton,

COMSAT Corporation files herewith an original and nine copies of its comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceedings.

Please direct any questions to the undersigned.

Yours truly,

Bruce A. Henoch
General Attorney

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Regulatory Policies to Allow Non-U.S.-	)	
Licensed Space Stations to Provide	)	IB Docket No. 96-111
Domestic and International Satellite	)	
Service in the United States	)	
	)	
and	)	
	)	
Amendment of Section 25.131 of the	)	
Commission's Rules and Regulations	)	CC Docket No. 93-23
to Eliminate the Licensing Requirement	)	RM-7931
for Certain International Receive-Only	)	
Earth Stations	)	
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and	)	
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COMMUNICATIONS SATELLITE	)	
CORPORATION Request for Waiver of	)	
Section 25.131(j)(1) of the Commission's	)	File No. ISP-92-007
Rules as it Applies to Services Provided	)	
via the INTELSAT K Satellite	)	

COMMENTS OF COMSAT CORPORATION

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August 21, 1997

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COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), by its attorneys, hereby submits its comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceedings.[1] COMSAT is a publicly traded U.S. corporation licensed and regulated by the Federal

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[1] *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al. ("DISCO II")*, Further Notice of Proposed Rulemaking, FCC 97-252, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 (released July 18, 1997) ("FNPRM").

Communications Commission ("FCC" or "Commission"), and is the U.S. Signatory to -- and largest single owner of -- the INTELSAT and Inmarsat intergovernmental satellite organizations ("IGOs"). COMSAT provides INTELSAT space segment to customers in the United States. In addition, COMSAT, through its own land earth stations ("LESs"), uses Inmarsat satellites to provide a range of mobile satellite services directly to end users.

I. Introduction and Summary

In comments and reply comments filed in the earlier round of this proceeding,[2] COMSAT argued that it would not be in the public interest for the Commission to apply any form of the "ECO-Sat" test, whether a route-by-route analysis or a "critical mass" test, in determining whether to allow provision of domestic service via the INTELSAT or Inmarsat systems.[3] Instead, COMSAT urged the Commission to adopt the "effect on competition" test, pursuant to which the Commission would examine the competitive effect that would result from COMSAT's provision of INTELSAT and Inmarsat space segment to users for domestic communications. COMSAT demonstrated that application of this test would increase the service options available to U.S. consumers, help address shortages, and satisfy the Commission's concerns about ensuring fair

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[2] *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al.*, 11 FCC Rcd 18178 (1996) ("First NPRM").

[3] Comments of COMSAT Corporation, IB Docket No. 96-111 (filed July 15, 1996) ("NPRM Comments"); Reply Comments of COMSAT Corporation, IB Docket No. 96-111 (filed Aug. 16, 1996) ("NPRM Reply Comments").

competition in the domestic satellite market.[4]

Since that time, the world regulatory landscape for satellite and other telecommunications services has changed dramatically, in large part due to the successful conclusion of the WTO Basic Telecom Agreement in February 1997. COMSAT is pleased to submit its views on the extent to which the proposals in the initial DISCO II Notice should be modified in light of the WTO Basic Telecom Agreement.

As stated in the FNPRM, "[t]he WTO Basic Telecom Agreement will have an unprecedented impact worldwide in opening basic telecommunications markets to competition. When fully implemented, commitments made by WTO members under the WTO Basic Telecom Agreement should substantially advance the Commission's goal of promoting a competitive satellite market in the United States and abroad." [5] COMSAT agrees that the outcome of the negotiations on basic telecommunications, including the adoption by many countries of the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper"), will contribute to a fundamental improvement in market access opportunities for all providers of satellite services.

As discussed below, COMSAT urges the Commission not to adopt any form of ECO-Sat

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[4] NPRM Comments at 12.

[5] FNPRM at ¶ 13.

test for WTO-covered services or operators licensed by WTO member countries. COMSAT supports the presumption that granting applications from satellite service operators licensed by WTO member countries will promote competition and that such applications should be subject to streamlined review.

Regarding the use of INTELSAT and Inmarsat for U.S. domestic services, COMSAT understands that the INTELSAT and Inmarsat intergovernmental organizations were excluded from the WTO since they are not suppliers from any one country. However, two facts must be considered. First, as stated in the FNPRM, many countries that are members of INTELSAT and Inmarsat also are members of the WTO and have made market access commitments.[6] Second, COMSAT, the authorized U.S. Signatory and investor in INTELSAT and Inmarsat, is a private U.S. company which seeks to utilize the capacity in which COMSAT's shareholders have invested to provide not only international services, but also domestic services, in the United States. COMSAT opposes application of an ECO-Sat test to INTELSAT and Inmarsat for provision of domestic services and submits that the same presumption that the Commission proposes to apply to applicants from WTO member nations -- that permitting access will serve the public interest and promote competition -- applies as well to use of INTELSAT and Inmarsat for U.S. domestic services. U.S. users should have the option not only of using U.S.-licensed satellites for both domestic and international services, as they do now, but also of using INTELSAT and Inmarsat. Only if an opposing party demonstrated that grant of such an application would pose a very high

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[6] FNPRM at ¶ 32.

risk to competition in the U.S. satellite market that could not be addressed through conditions imposed on authorization should use of INTELSAT and Inmarsat for domestic services be denied. In assessing "very high risk to competition in the U.S. satellite market," the fact that many countries which are INTELSAT and Inmarsat members are members of the WTO and have made market access commitments in the WTO, thereby providing U.S. satellites with access to their markets, is an important development.

As to existing and future affiliates of INTELSAT or Inmarsat, if they are companies licensed by WTO member countries, they should receive the same treatment as any other such company. In addition, the Commission should exercise restraint in imposing additional technical, financial, and legal conditions on non-U.S. licensed systems.

II. An ECO-Sat Test Should Not Apply to Provision of WTO-Covered Services by WTO Member-Licensed Satellite Systems

The U.S. played a leadership role in negotiating a successful conclusion to discussions on basic telecommunications under the auspices of the WTO. These negotiations commenced in April, 1994, and were to have concluded on April 30, 1996. The U.S. declined to support a conclusion of the negotiations last year in part because of concerns raised about the inadequacy of offers with respect to market access for satellites. Following the failure of these talks last April, the U.S. undertook a major effort in the WTO to clarify satellite issues and their inclusion in national schedules of commitments. Due in large part to the efforts of the U.S. government, the WTO agreed to a technology-neutral approach. Market access commitments include delivery of

services by satellites unless otherwise specified in a country's schedule.

The WTO Basic Telecom Agreement was concluded on February 15, 1997, with 69 countries making binding market access commitments. As stated in the FNPRM, "[t]hese countries represent approximately 95% of telecommunications revenues worldwide. Importantly, a significant portion of international telecommunications traffic is transmitted over satellite facilities. Forty-nine WTO members, including the United States, have committed to completely open their markets to competition in satellite services, either on January 1, 1998, or on a phased-in basis."[7] In testimony before the Senate Commerce Committee's Subcommittee on Communications on July 30, 1997, Peter Cowhey, then Chief of the FCC's International Bureau, estimated that these countries account for 80 percent of WTO member countries' total satellite service revenues.[8]

In addition to market access commitments which are binding and can be enforced through the WTO's dispute settlement process, the FNPRM states that 55 countries, including the U.S., committed to the entire Reference Paper, with an additional 10 countries honoring most of the Reference Paper's principles.[9] These principles include commitments by each country's

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[7] FNPRM at ¶ 10.

[8] *See* Statement of Peter Cowhey, Chief, International Bureau, FCC, before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, July 30, 1997, p. 7.

[9] FNPRM at ¶ 11.

government to adopt and implement competitive safeguards, to make licensing criteria publicly available, to allocate spectrum in a transparent and non-discriminatory manner, and to establish an independent regulator separate from and not accountable to any supplier of basic telecommunications services.

In light of these developments, COMSAT agrees that grant of applications for satellites licensed by WTO-member countries will presumptively promote competition and that such applications should be subject to streamlined review. As proposed in the FNPRM, any party opposing such applications should bear the burden of showing that grant of the application would pose a "very high risk" to competition in the U.S. satellite market that could not be addressed by conditions on the grant of the authorization. It is important that this test be applied reasonably and consistently; if the test were used inconsistently or to unfairly deny or delay access to the U.S. market, or if unreasonable or unneeded safeguards were imposed on non-U.S. applicants, other countries would likely impose similar roadblocks for U.S.-licensed systems and the benefits of the WTO agreement would be lost or embroiled in endless disputes. Further, to satisfy the WTO agreement's national treatment obligation, the Commission must impose the same tests and safeguards on U.S.-licensed systems.

The FNPRM also asks whether the Commission should apply an ECO-Sat route test in cases where an applicant seeks to provide service between the U.S. and a non-WTO-member

country using a satellite licensed by a WTO member.[10] COMSAT believes that it should not. The proposed presumption in favor of granting applications of WTO-member licensed systems should be applied no matter what route the applicant seeks to serve. Thus, the applicant should be permitted to serve routes to non-WTO countries from the U.S. absent a demonstration that authorizing service between the U.S. and non-WTO countries would pose a "very high risk" to competition in the U.S. satellite market that could not be addressed by conditions on the grant of the authorization.

It is well-recognized that one of the inherent advantages of satellites is multipoint coverage. Any route-by-route analysis would thus seriously impede the benefits of satellite technology. In addition, applying an ECO-Sat test for each non-WTO route to be served would have significant implications for development of services such as global MSS where terminals will be widespread and may be used in a number of different countries. Applying an ECO-Sat test to provision of such services between the U.S. and non-WTO-member countries could potentially fragment the MSS market and make seamless global communications difficult or impossible.

Lastly, as the Commission correctly notes in the FNPRM, applying an ECO-Sat route test under these circumstances without imposing similar obligations on U.S.-licensed systems serving non-WTO markets would violate the United States' national treatment obligation under the WTO agreement. Imposing such an obligation on U.S.-licensed operators would be contrary to the

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[10] FNPRM at ¶ 25.

Commission's conclusion in the DISCO-I Order.[11]

III. The Entry of INTELSAT and Inmarsat into the U.S. Domestic Market Should be Treated Identically to the Entry of Companies Licensed in WTO-Member Countries

As the Commission notes in the FNPRM, IGOs -- including INTELSAT and Inmarsat -- are not formally affected by the WTO agreement, which covers only services and service suppliers of WTO-member countries.[12] Because INTELSAT and Inmarsat (as well as other IGOs such as Intersputnik, Arabsat, and Eutelsat) are not service suppliers of any one nation, neither the U.S. nor other WTO-member countries have market access, national treatment, or most-favored-nation obligations directly to the IGOs. COMSAT submits, however, that several factors justify applying the same treatment to the provision of service using INTELSAT and Inmarsat satellites as the Commission proposes for satellites licensed by WTO member countries.

A. INTELSAT and Inmarsat Member Nations Made Market Access Commitments

Including the U.S., 141 countries are members of INTELSAT and 81 countries are members of Inmarsat. As the FNPRM correctly states, many members of INTELSAT and

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[11] *In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems,* 11 FCC Rcd 2429 (1996) ("DISCO I Order").

[12] FNPRM at ¶ 32.

Inmarsat are members of the WTO and made market access commitments.[13]

Of the 141 INTELSAT members, 107, or 76 percent, are members of the WTO subject to the provisions of the General Agreement on Trade in Services ("GATS"). In particular, GATS Article VI, Domestic Regulation, requires Members to ensure that all measures affecting trade in services are administered in a reasonable, objective and impartial manner. This Article also provides that technical standards and licensing requirements may not constitute unnecessary barriers to trade in services.

In addition to the competitive benefits of the GATS framework, we now have the WTO Basic Telecom Agreement. Of the 69 countries submitting offers in February 1997, 65 are members of INTELSAT.[14] Of the 107 members of INTELSAT which are members of the WTO, 65, including most of the countries in INTELSAT with key markets, submitted offers. These offers are significant both in terms of market access -- 50 countries made commitments to market access for fixed satellites -- and in terms of the pro-competitive regulatory principles specified in the Reference Paper, since 63 INTELSAT WTO member-countries adopted all or a portion of the Reference Paper. Further, as stated in FCC testimony before the Senate Subcommittee on Communications on July 30, upon execution of the commitments, the 71 percent of INTELSAT

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[13] The figures cited with regard to countries making market access commitments for satellites in this section are based on data issued by the Office of the U.S. Trade Representative.

[14] Countries that submitted offers that are not members of INTELSAT are Antigua/Barbuda, Belize, Dominica, and Grenada.

countries that now have a vertical relationship between Signatory and licensing authority will have diminished to 43 percent.[15] The facts also disprove allegations that being a member of INTELSAT somehow predisposes a country towards closed markets.

Of the 69 countries submitting offers in February, the large majority -- 51 countries -- are members of Inmarsat.[16] Furthermore, of the 81 countries that are members of Inmarsat, 63 countries, or 78 percent, are also members of the WTO subject to the GATS Agreement. Of these 63 Inmarsat members, 51 submitted offers, 42 included commitments to market access for mobile satellite services, and 50 countries adopted all or a portion of the Reference Paper. According to Inmarsat, land earth station operators regulated by member nations that have guaranteed access to their satellite markets generate 94 percent of Inmarsat's revenues; thus, almost all of Inmarsat's services are provided by companies based in countries to which U.S.-licensed satellite service providers will have full access under the WTO agreement.

The market access available to U.S.-licensed satellites will greatly increase as a result of the WTO agreement in February. The market access offers, commitments to the Reference Paper, and the obligations in the GATS will all facilitate use of U.S. satellites in foreign markets. As

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[15] Testimony of Peter Cowhey, *supra*, at 7.

[16] Countries that submitted offers that are not members of Inmarsat are Antigua/Barbuda, Austria, Belize, Bolivia, Cote d'Ivoire, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Ireland, Jamaica, Luxembourg, Morocco, Papau New Guinea, Trinidad/Tobago, and Venezuela. (Note that Hong Kong is a member of Inmarsat participating to date through the U.K. and in due course through China).

stated in the FNPRM, "[c]ommitments made under the WTO Basic Telecom Agreement itself and its framework, the General Agreement on Trade in Services (GATS), will fundamentally improve conditions of competition in satellite services."[17] As noted above, the large majority of the 69 countries submitting offers are members of INTELSAT and Inmarsat. The agreement thus clearly benefits access to INTELSAT and Inmarsat member countries by U.S.-licensed systems . Under these circumstances, there is no rational basis for adopting an ECO-Sat test as a condition for permitting COMSAT to provide domestic service via INTELSAT and Inmarsat.

B. COMSAT is a U.S. Company with Investment in INTELSAT and Inmarsat and Should be Permitted to Utilize its Investment to Serve U.S. Customers

Irrespective of the exclusion of IGOs under the WTO agreement, COMSAT is a U.S. company licensed and regulated by the Commission as a common carrier, and mandated under the Communications Satellite Act (as amended) to operate as the U.S. Signatory to INTELSAT and Inmarsat and to make the requisite capital investment in these systems. In view of the increasingly competitive international telecommunications environment, the increased opportunities for U.S. satellites in foreign markets, and the ability of foreign satellites to operate in the U.S. market, COMSAT fails to see any justification for denying COMSAT the ability to utilize fully its investment in INTELSAT and Inmarsat, which it has made pursuant to a mandate from the U.S. Congress. To deny COMSAT the ability to utilize its investment to meet domestic, as well as international, service needs penalizes U.S. shareholders as well as U.S. customers.

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[17] FNPRM at ¶ 2.

For these reasons, the Commission should adopt a policy of presuming that COMSAT's provision of domestic services, both as incidental to a customer's international service or purely domestic, is in the public interest.[18] In the unlikely event that an opposing party demonstrates a potential anticompetitive impact on the U.S. satellite market, the FCC always retains the ability to address such concerns by imposing conditions on, for example, the amount of INTELSAT or Inmarsat capacity made available for purely domestic service.

IV. If the Commission Does Apply a Separate Test for Entry of INTELSAT and Inmarsat into the U.S. Market, it Should Use the "Effect on Competition" Test

COMSAT indicated in its previous comments in this proceeding, prior to the WTO agreement, that the "effect on competition" analysis makes the most sense in evaluating entry by INTELSAT and Inmarsat into the U.S. market. Given the success of the WTO, we believe a separate test is no longer needed. However, if the Commission does decide, as it proposes in the FNPRM, to apply a separate test for IGO entry into the domestic U.S. market, its examination should be limited to a determination of whether provision of such service would diminish effective competition in the United States.[19]

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[18] Under any circumstances, as the Commission itself has often recognized, COMSAT should be permitted to provide capacity for domestic use where such capacity is incidental to a customer's international service. Under current FCC procedures, COMSAT and its customers must obtain case-by-case authorization for domestic service even where it is part of an overall international service.

[19] Of course, if the Commission should decide to adopt a "critical mass" analysis, it is clear from the preceding section that INTELSAT and Inmarsat entry into the U.S. market would easily pass muster. As discussed above, the overwhelming majority of ownership share and traffic in both INTELSAT and Inmarsat is represented by WTO-member nations (with the exception of

As the test is stated in the first DISCO II notice, the Commission would ask "whether the IGO, in light of its intergovernmental status and dominance, would be in a position to diminish effective competition in the United States."[20] In its initial comments in this proceeding, COMSAT showed that INTELSAT and Inmarsat entry into the U.S. market would have only a positive effect on competition,[21] and this is even more true today in light of the WTO agreement.

As of January 1, 1998, customers in the United States not only will have the ability to use U.S.-licensed satellite systems for international service as they do now, but also will have the option of using any foreign satellite licensed by a WTO member for domestic and international services in accordance with the U.S. WTO commitments. In view of this increased consumer choice in the U.S. market (and the increased market access opportunities for U.S.-licensed satellites in foreign markets), there is no justification whatever for precluding U.S. customers from enjoying the increased service options, enhanced competition, and lower prices that would result from allowing use of INTELSAT and Inmarsat capacity for domestic service.

As we pointed out in our comments in the previous DISCO II round, it is important to

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Russia and China), most of which have made specific commitments to open their satellite markets. Under the "critical mass" analysis, there is a more than sufficient percentage of open markets among INTELSAT and Inmarsat membership to ensure that the Commission can "rely on competitive market forces." FNPRM at ¶ 33.

[20] First NPRM at ¶ 68.

[21] NPRM Comments at 12.

note that it is actually COMSAT that will provide domestic service to U.S. customers, not INTELSAT or Inmarsat.[22] COMSAT has no intergovernmental status or immunity when providing service in its role as a common carrier, and is subject to U.S. antitrust and tax laws in that capacity just as any other company.[23] And, obviously, COMSAT is a U.S. corporation regulated far more heavily than any of its satellite competitors, many of whom are subject to no Title II regulation whatever. Thus, there is no "intergovernmental status and dominance" to affect competition in the U.S. domestic market by virtue of COMSAT's provision of services via INTELSAT and Inmarsat.

As we showed in our NPRM comments, COMSAT's provision of domestic service via INTELSAT and Inmarsat can only enhance competition.[24] For example, the incumbent fixed satellite providers currently control nearly all of the market, and most of them are far larger than COMSAT. Moreover, the satellite providers already in the market occupy most of the desirable orbital slots, and the limited amount of INTELSAT capacity potentially available to serve the U.S. domestic market would not enable COMSAT to dominate that market. With respect to

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[22] NPRM Comments at 13. As the Commission has correctly noted, the U.S. WTO commitment lists as a market access limitation COMSAT's exclusive rights to be the sole provider of INTELSAT and Inmarsat services for customers in the U.S. FNPRM at ¶ 10, fn.15. The exclusion reflects the provisions of the Communications Satellite Act of 1962 and the International Maritime Satellite Telecommunications Act of 1978, which designate COMSAT as the U.S. Signatory to INTELSAT and Inmarsat, respectively.

[23] *See generally* Alpha Lyracom Space Comm., Inc. v. Communications Satellite Corp., 946 F.2d 168, 170 (2d Cir. 1991), cert. denied, 502 U.S. 1096 (1992).

[24] NPRM Comments at 12-20.

COMSAT's provision of domestic service via Inmarsat, it should be noted that such competition would offer users a choice between existing AMSC services that are purely domestic and COMSAT's services which are globally available via Inmarsat. Introduction of competitive services via Inmarsat would not result in COMSAT's dominance of the U.S. market, since existing services are supported by the AMSC satellite, which provides eight times more capacity than an Inmarsat satellite, *i.e.*, eight times more L-band power (57 dBW versus 48 dBW), and generally lower prices.

First, it is obvious that the fixed domsats already have rights to -- and occupy -- the optimal U.S. orbital slots.[25] And, of course, these companies presently carry nearly all of the U.S. domestic satellite traffic. As COMSAT showed in its earlier comments in this proceeding, the domsats (as of November 1995) collectively provide approximately 550 transponders (at 36 MHz each) for U.S. domestic service.[26] Against that total, COMSAT estimates that it would be able to offer only about 8 transponders for domestic services throughout the INTELSAT system.[27] Thus, authorizing COMSAT to provide domestic services via INTELSAT would increase available

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[25] *See* FCC In-Orbit Satellite List (dated March 15, 1996).

[26] NPRM Comments at 16-17.

[27] Total INTELSAT capacity worldwide currently stands at approximately 1,091 transponders (at 36 MHz each). Of those transponders, only about 16 are currently available to serve the U.S. domestic market, and even fewer would offer full CONUS coverage. Moreover, COMSAT's ability to devote even this small amount of capacity to the U.S. domestic market is constrained by the needs of other Signatories seeking capacity on these same satellites for their use; it therefore is reasonable to estimate that only half of the INTELSAT capacity -- 8 transponders -- could actually be used to provide U.S domestic service.

capacity in the domestic marketplace by only 1.5 percent, and this figure does not take into account capacity that may be provided by satellites licensed by other WTO-member nations that may begin serving the U.S. domestic market in 1998. COMSAT, as a new entrant, would begin with a market share of virtually zero,[28] and would be incapable of ever posing an anticompetitive threat.

Second, the conclusion that COMSAT's provision of domestic service would enhance competition draws further support from the fact that, although the domestic mobile communications market offers numerous service options -- including cellular, paging, and personal communications services -- AMSC still is the sole geostationary MSS licensee serving the U.S. land mass.[29] COMSAT's provision of Inmarsat domestic services would therefore significantly expand consumer satellite service options Furthermore, AMSC also has authorization to use its domestic MSS system to provide international maritime MSS services.[30]

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[28] COMSAT has received limited domestic authorizations to use INTELSAT and Inmarsat capacity on an incidental, case-by-case basis, so it currently has a small market presence. There has been no suggestion by any party, however, nor could there be, that COMSAT possesses any market power in these instances.

[29] In addition, five well-financed "Big Leo" systems have received authorization to serve the U.S. market, and at least one of them -- Iridium -- is already marketing aggressively to U.S. customers. *See, e.g.*, "Iridium Creates New Plan for Global Cellular Service," Wall Street Journal, August 18, 1997, at B6. The Commission is also currently conducting a rulemaking proceeding to develop rules for allocation and assignment of spectrum for MSS in the 2 GHz band. *See In the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18.

[30] *In the Matter of AMSC Subsidiary Corp. for Authorization to Provide Incidental Transborder and International Maritime Comms.*, 11 FCC Rcd 6830, 6831-32 (1996).

Affording COMSAT the opportunity to compete with this and other firms in the provision of domestic as well as international services will result in better service and increased consumer choices (including convenient "one-stop shopping"), while also exerting downward pressure on prices.

Third, the additional capacity that COMSAT could bring to the U.S. domestic market via the INTELSAT and Inmarsat systems, while providing consumers with additional service options, in no event would be sizable enough to confer on COMSAT any ability to raise prices or restrict output -- the Commission's traditional definition of market power.[31] Put simply, the additional capacity COMSAT would bring would increase output and tend to lower prices. This is the obvious reason why incumbent satellite operators fiercely object to COMSAT's entry into their closely-held market.

Thus, there is simply no reason to continue to restrict the ability of U.S. customers to receive service from COMSAT via the INTELSAT and Inmarsat systems, as allowing such service will by no means "diminish effective competition," but rather can only make the domestic market more competitive. Indeed, under any analysis of the effect of INTELSAT and Inmarsat entry into the U.S. market, whether based on the effect on competition, determination of whether a "critical mass" of member nations is open to U.S. companies, or any other test, it is apparent

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[31] *See Competitive Carrier Proceeding,* 85 F.C.C.2d 1, 20-21 (1980) (First Report and Order); *accord* United States v. Western Electric Co., 900 F.2d 283, 296 (D.C. Cir. 1990).

that such entry can only benefit competition and enhance consumer choice in the U.S. market.

V. Proposed Rules for Future IGO Affiliates Appropriately Do Not Apply to ICO

The Commission states in the FNPRM that it intends to refrain from imposing an ECO-Sat test on future IGO affiliates that are licensed in WTO-member countries. However, the FNPRM states that the Commission does intend to conduct a thorough "review" of the affiliate's relationship to its IGO parent to ensure that there is no risk to competition.

The FCC's proposed affiliate rules are intended to apply only to "future" IGO affiliates, and, as such, will be inapplicable to ICO, which has been in existence since 1995. COMSAT believes that this is entirely appropriate. In fact, because ICO is a commercial entity licensed by the government of the United Kingdom, a WTO signatory, the Commission must treat ICO the same as it proposes to treat any other commercial MSS operator licensed by a WTO member country.

However, COMSAT submits that the Commission has no basis for treating future IGO affiliates differently from other companies licensed in the affiliate's home country. If future IGO affiliates are licensed by WTO-member countries, they should receive the same treatment as any other company of a WTO member. Put simply, to do otherwise would be inconsistent with the United States' WTO obligations. COMSAT recognizes that, throughout the WTO negotiating process, the U.S. stressed its right to protect the U.S. marketplace against anticompetitive

effects.[32] Indeed, the Executive Branch has stated that it intends to enforce U.S. antitrust law, regulation, policy, and practice in implementing to WTO agreement.[33] This competitive review will be more than sufficient to detect any affiliate relationships or structures that pose a risk to competition. There is no reason to go further and subject future IGO affiliates to strenuous examinations not required of other companies licensed by WTO-member countries. Such a process is likely to be viewed by other countries as an effective procedural roadblock to entry into the U.S. market and would surely set a bad precedent as other countries engage in efforts to conform their laws and practices to their market access commitments.

VI. The Commission Should Not Impose U.S. Technical Standards or Financial Requirements on Foreign-Licensed Systems

The Commission states in the FNPRM that it does not intend "to require non-U.S. licensed space stations to obtain a separate (and duplicative) license from the United States before serving the U.S. market."[34] However, it appears that the Commission intends to impose requirements on non-U.S. licensed space segment operators that would have the practical effect of doing just that. While we understand the need for the Commission to require information necessary to protect U.S. radio operations from harmful interference from non-U.S. licensed systems, we believe this can be adequately achieved through the frequency coordination

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[32] COMSAT has worked with Commission and others in the U.S. government to design affiliate structures that satisfy U.S. competitive concerns, and will continue to do so.

[33] FNPRM at ¶ 35.

[34] FNPRM at ¶ 32.

procedures specified in the International Radio Regulations, by Commission licensing of any U.S. earth stations proposing to operate with non-U.S. licensed space segment, and through Commission participation in any arrangements for technical type approval of user terminals such as those being considered as a result of the Global Mobile Personal Communications by Satellite Memorandum (GMPCS-MoU) finalized in February, 1997.

The imposition of technical requirements on non-U.S. space segment operators other than what is necessary to protect against harmful interference would surely strike foreign nations as an undesirable attempt at U.S. overreaching, regardless whether such action would technically violate the WTO agreement. The Commission itself recognized in the first DISCO II NPRM that relicensing of non-U.S. systems would likely offend foreign administrations, who "understandably expect the U.S. to accept the sufficiency of satellite licensing procedures abroad -- as we expect them to accept the sufficiency of our procedures."[35] Such action could provoke other nations to impose their own conflicting technical requirements on U.S.- licensed systems seeking to offer service to such countries. In short, having won a hard-fought battle to open the world's telecommunications markets at the WTO, the U.S. needs to continue to lead through the prompt, fair, and effective implementation of U.S. commitments in the WTO. Because many nations will follow the U.S. lead in determining whether foreign applicants must meet domestic technical, legal, and financial conditions, it behooves the Commission to act with restraint in this area.

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[35] First NPRM at ¶ 14.

VII. Conclusion

The WTO agreement will significantly advance a competitive regulatory environment and greatly increase market access opportunities for U.S.-licensed satellites in the markets of INTELSAT's and Inmarsat's members. For the reasons stated, COMSAT respectfully urges the Commission to permit COMSAT to provide domestic services utilizing INTELSAT and Inmarsat satellites under the same policy the Commission adopts for satellite services provided by companies licensed by WTO member countries. The Commission also should treat any existing and future INTELSAT and Inmarsat affiliates licensed by WTO-member nations on the same basis as other satellites licensed by WTO-member nations subject to the provisions noted.

Respectfully submitted,

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